Supreme Court, U.S.
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No. 00-765

IN THE

# Supreme Court of the United States

HARRY W. VINSON and BRAD VINSON,

*Petitioners,*

*v.*

DOROTHY COLOM, *et al.*,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

## BRIEF IN OPPOSITION FOR RESPONDENT WILLIAM (BILL) BENSON

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## STATEMENT OF THE CASE

### Relevant Factual Elements

On or about November 18, 1998, Chancellor Dorothy Colom ("Colom") entered a Final Decree in Cause #96-0078 and #96-1100 in the Chancery Court of Lee County, Mississippi, regarding the appointment of a guardian for Woodrow and Kernith Vinson, parents of Petitioner Harry Vinson and grandparents of Petitioner Brad Vinson (collectively "Petitioners"). The Petitioners were parties to these actions and timely perfected their appeals to the Mississippi Supreme Court from these guardianship appointments on or about December 9, 1998.

On February 2 and 3, 1999, Colom presided over a hearing in which Kernith Vinson sought a temporary restraining order and preliminary injunction against the Petitioners. The purpose of Kernith Vinson's Petition was to prohibit the Petitioners herein from taking any actions concerning Woodrow W. Vinson. Fred M. Bush, Jr. ("Bush") and Kay Trapp ("Trapp"), both attorneys with the law firm of Phelps Dunbar, LLP ("Phelps"), represented Kernith Vinson in this matter. Upon conclusion of this hearing, Colom granted the preliminary injunction sought by Mrs. Vinson and enjoined the Petitioners from taking any of the following enumerated list of actions:

1. Taking further action of any kind using any power of attorney or other document executed by Woodrow W. Vinson;

2. Taking any action of any kind to prohibit or prevent Kernith B. Vinson, Rita K. Vinson or any other family member or friend from visiting with Woodrow W. Vinson while hospitalized;

3. Acquiring or attempting to acquire signatures on any legal or other type of document from either Woodrow W. Vinson or Kernith B. Vinson;

4. Transferring, withdrawing, disposing of or dealing with in any way, any funds belonging to Woodrow W. Vinson or Kernith B. Vinson, since November 18, 1998; and

5. Taking any action that would in any way affect any real or personal property or other assets belonging to Woodrow W. Vinson or Kernith B. Vinson since November 18, 1998.

Petitioner Harry Vinson was further enjoined from preventing Woodrow W. Vinson from returning to his home upon his release from North Mississippi Medical Center in Tupelo, Mississippi.

By order dated March 19, 1999, Colom appointed William (Bill) Benson ("Benson"), Chancery Clerk for Lee County, Mississippi, as Conservator for Woodrow W. Vinson and Kernith B. Vinson.

On March 31, 1999, Petitioners filed their Complaint against Respondents Colom, Benson, State Farm Fire and Casualty Company ("State Farm"), Bush, Trapp, and Phelps (collectively "Respondents"), alleging therein various federal Constitutional violations actionable pursuant to 42 U.S.C. §§ 1983 and 1985. Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, all Defendants, including Benson, ultimately moved for dismissal of the Petitioners' claims on various grounds, including immunity. (R. 127, 144, 169, 260). Prior to the Court ruling upon the Respondents various motions to dismiss, the Petitioners

submitted numerous discovery requests which United States Magistrate Judge Jerry A. Davis held in abeyance pending resolution of the immunity issues presented in the various Respondents' motions to dismiss. (R. 174, 345). On October 6, 1999, the District Court entered a memorandum opinion and order of dismissal granting all pending motions to dismiss presented by the Respondents. (R. 376). The District Court's October 6, 1999 order of dismissal further barred the Petitioners from filing any further action in the United States District Court for the Northern District of Mississippi without prior written permission from that Court. (R. 376).

## PERCEIVED MISSTATEMENTS OF FACT OR LAW IN THE PETITION THAT BEAR ON WHAT ISSUES PROPERLY WOULD BE BEFORE THE COURT IF CERTIORARI WERE GRANTED.

The instant Petition is based upon a number of misstatements of fact. The first is Petitioners' patently false statement concerning actions taken in the Lee County, Mississippi Chancery Court by Colom. The record clearly reflects that Colom entered an order on November 18, 1998 concerning the appointment of a guardian for Woodrow and Kernith Vinson, which decision was ultimately appealed to the Mississippi Supreme Court on or about December 9, 1998. Petitioners argue in their Petition, apparently for the first time, that no November 18, 1998 order exists. (Pet. 4). Not surprisingly, Petitioners make no reference to the record in support of their contention. Clearly this is merely an effort to distract the court's attention from the real issue in this matter, that being the ultimate dismissal of the Petitioners' Complaint.

The second misstatement asserted by Petitioners is that "averments in the complaint were not answered pursuant to the rules of court". (Pet. 5). Again, as recognized by Petitioners elsewhere, and as clearly set forth in the District Court's order of dismissal and memorandum opinion, all Respondents, including Benson, filed timely motions to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (R. 127, 144, 169, 260). As the court is well aware, a motion to dismiss pursuant to Rule 12(b)(6) may be made in lieu of an answer and, despite Petitioners' assertion to the contrary, filing of a motion to dismiss pursuant to the aforesaid rule, rather than an answer, does not constitute a failure to respond to, or failure to deny the allegations of, the complaint.

Petitioners further contend that United States Magistrate Judge Jerry A. Davis' orders holding in abeyance discovery pending resolution of the immunity issues presented in the Respondents' motions to dismiss deprived the Petitioners of the opportunity to "prove their case". (Pet. 5-6). As the Court is well aware, a motion to dismiss, pursuant to Rule 12(b)(6), tests the legal sufficiency of the complaint, and in considering such a motion, the District Court is limited to the pleadings submitted by the parties. In any case, the District Court ultimately dismissed Petitioners' Complaint as the claims set forth therein were expressly barred by the immunity issues raised in the Respondents' motions to dismiss. Application of the quasi-judicial immunity defense asserted by Benson, as well as other defenses asserted by the remaining Respondents, were clearly questions of law, rather than fact, thereby obviating the need for any discovery, specifically discovery not relevant to the Respondents' immunity defenses.

## REASONS FOR DENYING THE WRIT

Although the issues raised by Petitioners are generally ambiguous and conclusory in nature, the general thrust of the Petition focuses on the District Court's limitation of discovery and subsequent limitation on Petitioners' ability to file further, frivolous lawsuits in that court. It is well settled that a court may limit the sequence and filing of causes of action, especially where a pattern of frivolous and harassing complaints exist, in order to control its docket. Further, a District Court may properly limit discovery, where appropriate, especially where the discovery at issue will not assist in resolution of any issues before the Court. Petitioners further contend that the Fifth Circuit Court of Appeal's affirmance of the District Court's judgment pursuant to the Rooker-Feldman doctrine is improper. Unfortunately, this allegation is likewise without merit as the Fifth Circuit Court of Appeals correctly adduced that issues presented in Petitioners' federal court action were so intertwined with the pending state court appeal to the Mississippi Supreme Court, as to render them practically inseparable. In such an event, the federal courts are without jurisdiction and, accordingly, affirmance of the District Court's dismissal was appropriate. Given the foregoing, Respondent Benson respectfully requests that the Writ should be denied.

## I.

## THE DISTRICT COURT'S DECISION AND FIFTH CIRCUIT'S AFFIRMANCE THEREOF ARE IN COMPLIANCE WITH APPLICABLE LAW.

A review of the District Court's October 6, 1999 memorandum opinion dismissing Petitioners' Complaint clearly reveals that the Court dismissed all claims against Benson, and his surety bond, State Farm, based upon the doctrine of quasi-judicial immunity. Pursuant to Mississippi law, state court clerks, such as Benson, are entitled to quasi-judicial immunity for actions taken pursuant to their official position. *See Boston v. Lafayette County, Mississippi*, 744 F. Supp. 746, 750 (N.D. Miss. 1990), *aff'd*, 933 F.2d 1003 (5th Cir. 1991); *Johnson v. Craft*, 673 F. Supp. 191, 193 (S.D. Miss. 1987). (Pet. App. 1, *et al.*). The quasi-judicial immunity defense, applicable to Benson, has been widely recognized as a viable defense in Mississippi by the District Courts and Fifth Circuit Court of Appeals in other cases. *See Johnson v. Kegans*, 870 F.2d 992, 995 (5th Cir. 1989); *Hanner v. United States*, 660 F. Supp 77, 78 (S.D. Miss. 1986). Further, the protection enjoyed by court clerks has been recognized by other circuit courts as well. *See Rodrequez v. Weprin*, 116 F.3d 62, 66 (2d Cir. 1997) (finding inmate's § 1983 claim against court clerk barred by quasi-judicial immunity); *Wiggins v. New Mexico State Supreme Court Clerk*, 664 F.2d 812, 815 (10th Cir. 1981) (dismissing inmate's federal civil rights action against State Supreme Court Clerk on grounds of quasi-judicial immunity); *Slotnick v. Staviskey*, 560 F.2d 31, 32 (1st Cir. 1977) (recognizing court clerk's immunity from suits under § 1983). The Petitioners now attack the Fifth Circuit Court of Appeals affirmance of this decision, contending the Court's reliance

upon the Rooker-Feldman doctrine was error. As this court is well aware, the Rooker-Feldman doctrine prohibits federal courts from engaging in what is essentially appellate review of a state court decision. *See District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 75 L. Ed. 2d 206, 103 S. Ct. 1303 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 68 L. Ed. 362, 44 S. Ct. 149 (1923). Accordingly, any potential error made by a state trial court is to reviewed, and if necessary corrected, by that state's appropriate appellate court; an aggrieved party's recourse at the federal level consists solely of the ability to petition the United States Supreme Court for a Writ of Certiorari. *See Weekley v. Morrow*, 204 F.3d 613, 615 (5th Cir. 2000); *Carbonell v. Louisiana Dept. of Health and Human Resources*, 772 F.2d 185, 188-89 (5th Cir. 1985). As referenced by the Fifth Circuit Court of Appeals in the order of affirmance, "The constitutional issues presented in the [Petitioner's] action are inextricably intertwined with the Chancery Court's order appointing Benson as [Woodrow] Vinson's Conservator. Accordingly, the [Petitioners'] action constituted a request that the district court review a state court decision." (Pet. App. 7, *et al.*). Undoubtedly the court was correct in its assertion, as the sole basis for the Petitioners' initial civil rights claim against Benson was based upon Benson's appointment by Colom. Underlying that claim, by necessity, is a contention that Colom's order appointing Benson was erroneous, and without authority. The Petitioners' proper remedy was to appeal this decision to the Mississippi Supreme Court, as Petitioners' had previously done in other matters, in order to address this issue. Petitioners' Complaint filed with the District Court, therefore, constituted an improper request for appellate review of a state court decision by a federal court, and thus, is prohibited.

## II.

## THE DISTRICT COURT POSSESSES THE INHERENT AUTHORITY TO REASONABLY CONTROL ITS DOCKET BY LIMITING THE FILING OF FRIVOLOUS LAW SUITS.

Petitioners further contend that the District Court was without authority to limit the Petitioners' ability to commence additional actions in the United States District Court for the Northern District of Mississippi absent prior approval. In making this argument, however, Petitioners ignore well-established law which allows a District Court to take such action to control its docket. Indeed, a long line of cases exists in both the Fifth Circuit Court of Appeal, and sister circuits, which holds an order, such as that entered by the District Court, is proper and does not constitute a violation of a party's "access to the courts" rights. Indeed, numerous courts have held that reasonable restrictions imposed on potential litigants, including the necessity of seeking prior permission from the court before commencing any action, are proper under controlling law and do not restrict any litigant's constitutional rights, especially where litigants, such as Petitioners, have a history of filing numerous frivolous and harassing actions. *See Cauthomb v. Rogers*, 116 F.3d 1334 (10th Cir. 1997); *Depineda v. Hemphill*, 34 F.3d 946 (10th Cir. 1994); *Murphy v. Collins*, 26 F.3d 541 (5th Cir. 1994); *In Re Martin v. Trigona*, 9 F.3d 226 (2d Cir. 1993); *Villar v. Crowley, Maritime Court*, 990 F.2d 1489 (5th Cir. 1993); *Copeland v. Green*, 949 F.2d 390 (11th Cir. 1991); *Farguson v. M. Bank of Houston, NA*, 808 F.2d 358 (5th Cir. 1986). The foregoing authorities explicitly illustrate the principle that potential litigants have no absolute or unconditional right of access to the courts, but rather are only entitled to a reasonable opportunity to be heard. *United States ex rel. Verdone v. Circuit Court of Taylor County*,

73 F.3d 669 (7th Cir. 1995); *Ciccarelli v. Carey Canadian Mines, Ltd.*, 757 F.2d 548 (3d Cir. 1985). Clearly the District Court's order does not prohibit the Petitioners from filing additional actions in the future, *in toto*; rather, said Order merely requires prior permission before doing so. (Pet. App. 1, *et al.*). Given the Petitioners' penchant for filing frivolous and harassing lawsuits, in conjunction with the District Court's ability to control the filing of such actions, Petitioners' argument on this point is without merit.

## III.

## THE DISTRICT COURT FOLLOWED APPLICABLE RULES OF CIVIL PROCEDURE, AND LOCAL RULES, IN LIMITING DISCOVERY IN THIS CAUSE.

The Petitioners further contend that the District Court erred in entering various orders staying discovery pending resolution of the Respondents' various immunity defenses. In regard to Benson, United States Magistrate Judge Jerry A. Davis entered an order dated May 7, 1999, pursuant to Section 4.I.A.(10) of the Uniform Civil Justice Expense and Delay Reduction Plan (now 26.1(A)(10) of the Uniform Local Rules of the United States District Courts for the Northern and Southern Districts of Mississippi) which stayed all discovery not relevant to the quasi-judicial immunity defense raised by Benson in his motion to dismiss, pending the District Court's ruling on said Motion. (R. 174). Uniform Local Rule 26.1(A)(10) states as follows:

> *Immunity Defense Cases*
>
> In all cases in which an immunity defense is pled, that defense shall be raised in a separate motion as expeditiously as possible after the filing of the

> complaint. The filing of an immunity defense motion *shall stay* all discovery not relevant to the immunity issue and stay the parties' obligation to make further disclosures pending the court's ruling on the motion at issue, including any appeal. The moving party shall submit to the Magistrate Judge an order granting the stay at the time the immunity defense motion is filed. The plaintiff shall promptly notify the Magistrate Judge of a decision on the immunity defense motion and submit an order lifting the stay. Within fifteen days of the order lifting the stay, the remaining defendant(s) shall file the initial disclosures and all other deadlines shall be determined accordingly. A case management conference shall be scheduled within sixty days of the order lifting the stay.

(Emphasis added). Uniform Local Rule 26.1(A)(10). The order entered by Magistrate Davis on May 7, 1999, is clearly and unequivocally in compliance with Rule 26.1(A)(10) as it unambiguously limits all discovery not relevant to the immunity issue. (R. 174, 345). In light of Magistrate Davis' clear compliance with the local rules, the provisions of which are mandatory in nature, the Petitioners' argument on this point is without merit. Further, the "discovery" issue raised by the Petitioners has no bearing on the District Court's dismissal, pursuant to Rule 12(b)(6), as such motion is designed solely to test the legal sufficiency of the Complaint, without reference to discovery or other evidence outside the pleadings. Under controlling law, therefore, the Petitioners' arguments concerning this issue are likewise without merit, and do not justify issuance of a Writ of Certiorari by this Court.

## CONCLUSION

For all the foregoing reasons, Respondent William (Bill) Benson respectively requests that this Honorable Court deny the instant Petition for Writ of Certiorari.

Respectfully submitted,

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